

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
 CENTRAL DIVISION

FILED  
 U.S. DISTRICT COURT  
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 DISTRICT OF UTAH  
 BY: \_\_\_\_\_  
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\*\*\*\*\*  
 SECUREALERT, INC., ) Case No. 2:06cv00098 DS

Plaintiff, )

vs. ) ORDER

THE JAXARA GROUP, LLC;  
 DANIEL BOICE; and ALEXANDER PETTY )

Defendants. )

\*\*\*\*\*

Defendants Jaxara Group, Daniel Boice, and Alexander Petty filed a motion pursuant to Rules 9 and 12 of the Federal Rules of Civil Procedure to dismiss plaintiff's Fourth Cause of Action alleging Fraud against all defendants and Fifth Cause of Action alleging Constructive Fraud/Negligent Misrepresentations against all defendants. Defendants request that the Court dismiss SecureAlert's fraud claims because the claims are not pleaded with sufficient particularity to meet Rule 9(b).

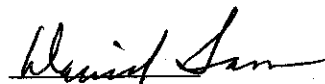
Rule 9 (b) requires that a complaint set forth the identity of the party making the false statements and that the pleadings give notice to the defendants of the fraudulent statements for which they are alleged to be responsible. The Tenth Circuit has held that Rule 9 (b) requires only the identification of the circumstances constituting fraud, and that it does not require any particularity in connection with an averment of intent, knowledge or condition of mind. Seattle-First Nat'l. Bank v. Carlstedt, 800 F.2d 1008, 1011 (10<sup>th</sup> Cir. 1986).

The court has further stated that Rule 9 (b) requires that a complaint set forth the identity of the party making the false statements, but that it does not require that a complaint set forth detailed evidentiary matter . . . or that the allegations be factually or legally valid. The pleadings are intended to give notice to the defendants of the fraudulent statements for which they are alleged to be responsible. Schwartz v. Celestial Seasonings, Inc., 124 F.3d 1246, 1253 (10<sup>th</sup> Cir. 1997). This court finds that the pleadings are sufficient to set forth a complaint under Rule 9 (b) and therefore the motion to dismiss is **denied**.

SO ORDERED.

DATED this 25<sup>th</sup> day of January 2007.

BY THE COURT:



DAVID SAM  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT